

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 SHIRLEY HAMPTON,

Case No.: 2:19-cv-01385-JAD-EJY

5 Plaintiff,

**ORDER**

6 v.

7 SPRING MOUNTAIN TREATMENT  
8 CENTER et al.,

9 Defendants.

10 Presently before the Court is Plaintiff Shirley Hampton's Application to Proceed *In Forma*  
11 *Pauperis* (ECF No. 2), attached to which was a Complaint for Employment Discrimination (ECF  
12 No. 2-1) pursuant to Title VII of the Civil Rights Act of 1964, as codified 42 U.S.C. §§ 2000e to  
13 2000e-17, and the Age Discrimination in Employment Act of 1967 ("ADEA"), as codified, 29  
14 U.S.C. §§ 621 to 634.

15 **I. In Forma Pauperis Application**

16 Plaintiff submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to  
17 prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed *in forma*  
18 *pauperis* will be granted.

19 **II. Screening the Complaint**

20 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint  
21 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims  
22 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted,  
23 or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).  
24 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state  
25 a claim under Federal Rule of Civil Procedure 12(b)(6). *Watson v. Carter*, 668 F.3d 1108, 1112  
26 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient factual matter,  
27 accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556  
28 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only dismiss them

1 “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
2 would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*,  
3 556 U.S. at 678).

4 In considering whether the complaint is sufficient to state a claim, all allegations of material  
5 fact are taken as true and construed in the light most favorable to the plaintiff. *Wyer Summit P’ship*  
6 *v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the  
7 standard under the Federal Rule of Civil Procedure 12(b)(6) does not require detailed factual  
8 allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v.*  
9 *Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is  
10 insufficient. *Id.* Unless it is clear the complaint’s deficiencies could not be cured through  
11 amendment, a *pro se* plaintiff should be given leave to amend the complaint with notice regarding  
12 the complaint’s deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

### 13 **III. Federal Question Jurisdiction**

14 Federal courts are courts of limited jurisdiction and possess only that power authorized by  
15 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Pursuant to 28 U.S.C. §  
16 1331, federal courts have original jurisdiction over “all civil actions arising under the Constitution,  
17 laws, or treaties of the United States.” Cases “arise under” federal law either when federal law  
18 creates the cause of action or where the vindication of a right under state law necessarily turns on  
19 the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088-89  
20 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the “well-pleaded complaint  
21 rule,” which provides that “federal jurisdiction exists only when a federal question is presented on  
22 the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386,  
23 392 (1987).

24 Plaintiff’s complaint asserts employment discrimination and retaliation claims under Title  
25 VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967. *See*  
26 ECF No. 2-1 at 4. Claims under both statutes invoke the Court’s federal jurisdiction.

1     **IV.     Plaintiff's Claims**

2             Having determined that federal-question jurisdiction exists under the well-pleaded complaint  
3 rule, the Court now turns to the sufficiency of the factual allegations to state a claim. Plaintiff brings  
4 claims for racial discrimination and retaliation in violation of Title VII of the Civil Rights Act. *See*  
5 42 U.S.C. § 2000e et seq. Title VII allows persons to sue an employer for discrimination on the  
6 basis of race, color, religion, gender or national origin if he or she has exhausted state or federal  
7 Equal Employment Opportunity Commission ("EEOC") administrative procedures. If the EEOC  
8 decides not to sue, and if there is no settlement that is satisfactory to plaintiff, the EEOC will issue  
9 plaintiff a right-to-sue letter and plaintiff will have exhausted his remedies with the EEOC. 42  
10 U.S.C. § 2000e-5(f)(1). Here, Plaintiff attached a right-to-sue letter from the EEOC to her complaint.  
11 ECF No. 2-1 at 9. Thus, it appears Plaintiff has exhausted her administrative remedies.

12             Within 90 days of receipt of the dismissal and right-to-sue letter from the EEOC, an  
13 individual may file a lawsuit against the respondent under federal law based on Title VII in federal  
14 or state court. 29 C.F.R. § 1601.28(e)(1). On May 15, 2019, the U.S. Equal Employment  
15 Opportunity Commission ("EEOC") issued a Dismissal and Notice of Right to Sue letter to Plaintiff.  
16 ECF No. 2-1 at 9. Plaintiff received the right to sue letter on May 18, 2019, and subsequently filed  
17 the instant action on August 12, 2019. *Id.* at 6. Therefore, Plaintiff's employment discrimination  
18 complaint pursuant to Title VII is timely.

19             Upon 60 days of filing a charge with the EEOC, but no later than 90 days after one receives  
20 notice that the EEOC's investigation is concluded, one may file a lawsuit in court pursuant to ADEA.  
21 Plaintiff noted that 60 days or more have elapsed since filing her charge of age discrimination with  
22 the EEOC regarding the defendants' alleged discriminatory conduct. ECF No. 2-1 at 6. For the  
23 reasons stated above, Plaintiff's employment discrimination complaint pursuant to ADEA is timely.

24             To sufficiently allege a *prima facie* case of discrimination in violation of Title VII to survive  
25 a § 1915 screening, Plaintiff must allege: (1) she belonged to a protected class; (2) she was qualified  
26 for her job; (3) she was subjected to an adverse employment action; and (4) similarly situated  
27 employees not in her protected class received more favorable treatment. *See Shepard v. Marathon*  
28 *Staffing, Inc.*, 2014 U.S. Dist. Lexis 76097, \*5 (D. Nev. June 2, 2014) (citing *Moran v. Selig*, 447

1 F.3d 748, 753 (9th Cir. 2006)). In screening Plaintiff's complaint and construing it liberally, the  
2 Court looks in part to the attachments provided. *See Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th  
3 Cir. 2007) (courts may generally consider allegations contained in pleadings, as well as exhibits  
4 attached to the complaint).

5 As stated above, Plaintiff Shirley Hampton's *in forma pauperis* application was accompanied  
6 by a complaint for employment discrimination, which appears to allege race, religion, and age  
7 discrimination against Defendants Spring Mountain Treatment Center, Universal Health Services,  
8 "Case Manager Supervisor Kelsey," "Case Manager Diana," "Case Manager Shavonne," "Ronneka,  
9 RN," "Patina," "James, RN," "Case Manager Shannon," and "Case Manager Sarah." *See* ECF No.  
10 2-1 at 1-3.

11 There is no individual liability for discrimination or harassment under federal or Nevada state  
12 law. *Miller v. Maxwell's Intern. Inc.*, 991 F.2d 583 (9th Cir. 1993) (holding individual defendants  
13 cannot be liable for damages under Title VII and ADEA); *see also U.S. E.E.O.C. v. Caesars Entm't*,  
14 2006 WL 1168840, \*3 (D. Nev. Apr. 25, 2006) ("[T]he court sees no meaningful distinction between  
15 Title VII and Nevada's statutory scheme in relation to the reasoning used in *Miller*. Therefore, it  
16 appears to this court that the Nevada Supreme Court would find that there is no liability for an  
17 individual pursuant to [Nevada's anti-discrimination statutes]."). Therefore, Plaintiff's claims  
18 against "Case Manager Supervisor Kelsey," "Case Manager Diana," "Case Manager Shavonne,"  
19 "Ronneka, RN," "Patina," "James, RN," "Case Manager Shannon," and "Case Manager Sarah" fail  
20 to state claims upon which relief may be granted.

21 Plaintiff states that, to the best of her recollection, the alleged discriminatory acts occurred  
22 on May 18, 2018 through June 1, 2018. *See* ECF No. 2-1 at 5. Plaintiff alleges that the Defendants:

23 [A]llowed a younger white female . . . to complete her 90 day probationary period  
24 and terminated plaintiff's probationary period before 30 days or before the 90 day  
25 probationary period. Defendants retaliated [sic] against plaintiff's [sic] when she  
26 reported acts of discrimination & sexual harassment by aborting her employment  
27 and terminating her. Defendants all created extremely hostile work environment  
28 for plaintiff.

*Id.* at 6.

1 The Court finds Plaintiff's race discrimination claim fails to sufficiently allege facts upon  
2 which relief may be granted pursuant to the standards established in *Iqbal*, 556 U.S. at 679. That is,  
3 Plaintiff fails to demonstrate a plausible claim for relief, which is more than a "mere possibility of  
4 misconduct." *Id.* Further, "[a] claim has facial plausibility when the plaintiff pleads factual content  
5 that allows the court to draw the reasonable inference that the defendant is liable for the misconduct  
6 alleged." *Id.* at 678. Plaintiff has not alleged to what protected class she belonged and, therefore,  
7 has not alleged that similarly situated employees not in her protected class received more favorable  
8 treatment. The Court will therefore dismiss Plaintiff's race discrimination claim with leave to  
9 amend.

10 The Court finds Plaintiff's religious discrimination claim fails to sufficiently allege facts  
11 upon which relief may be granted pursuant to the standards established in *Iqbal*, 556 U.S. at 697.  
12 Plaintiff checked a box on her complaint indicating that Defendants discriminated against her based  
13 on her religion (ECF No. 2-1 at 5). Notwithstanding, Plaintiff offered no facts to support her  
14 religious discrimination claim. Plaintiff has failed to properly plead a claim for religious  
15 discrimination, but the Court cannot conclude that she could never properly plead this claim. The  
16 Court will therefore dismiss Plaintiff's religious discrimination claim with leave to amend.

17 To sufficiently allege a *prima facie* case of retaliation in violation of Title VII to survive a §  
18 1915 screening, Plaintiff must allege: (1) that he or she committed a protected act, such as  
19 complaining about discriminatory practices; (2) that the employee suffered some sort of adverse  
20 employment action; and (3) a causal connection between the employee's action and the adverse act.  
21 *See Jenkins v. Lab. Corp. Of Am.*, 2013 U.S. Dist. Lexis 118008, \*5 (D. Nev. Aug. 20, 2013) (citing  
22 *Davis v. Team Elec Co.*, 520 F.3d 1080, 1093–94 (9th Cir. 2008)). Here, Plaintiff alleges that she  
23 complained of discriminatory treatment, that her employment was thereafter terminated, and that the  
24 termination was retaliation for engaging in protected activity. *See* ECF No. 1-1 at 3–4. Plaintiff has,  
25 therefore, stated a retaliation claim against her employer.

26 To sufficiently allege a *prima facie* case of discrimination in violation of ADEA to survive  
27 a § 1915 screening, Plaintiff must show that (1) she is at least 40 years of age; (2) she was performing  
28 her job satisfactorily; (3) she was fired; and (4) she was replaced by substantially younger employees

1 with equal or inferior qualifications or discharged under circumstances that give rise to an inference  
2 of age discrimination. *Guinn v. Yellow Checker Star, Inc.*, No. 2:15-cv-00344-APG-GWF, 2015  
3 WL 4092080, \*3 (D. Nev. July 7, 2015). Plaintiff states that she was born in 1960, and therefore,  
4 she is at least 40 years of age. ECF No. 2-1 at 5. As noted above, the Plaintiff does not discuss her  
5 own job performance. *Id.* Further, Plaintiff does allege that she was fired, but does not make clear  
6 whether a younger employee with equal or inferior qualifications replaced her, or if Defendants  
7 simply allowed the replacing party to complete her 90 day probationary period. *Id.* at 6. Plaintiff  
8 has failed to properly plead a claim for age discrimination, but the Court cannot conclude that she  
9 could never properly plead this claim. The Court will therefore dismiss Plaintiff's age discrimination  
10 claim with leave to amend.

11 Hence, construing Plaintiff's pleadings liberally, she has failed to state a claim for race,  
12 religious, or age discrimination. The Court therefore will dismiss Plaintiff's complaint without  
13 prejudice for the Plaintiff to file an amended complaint.

14 Accordingly,

15 IT IS THEREFORE ORDERED that Plaintiff's Application for Leave to Proceed *In Forma*  
16 *Pauperis* (ECF No. 2) is GRANTED. Plaintiff will not be required to pay the filing fee in this action.

17 IT IS FURTHER ORDERED that Plaintiff is permitted to maintain this action to conclusion  
18 without the necessity of prepayment of any additional fees or costs or the giving of a security for  
19 fees or costs. This Order granting leave to proceed *in forma pauperis* does not extend to the issuance  
20 of subpoenas at government expense.

21 IT IS FURTHER ORDERED that Plaintiff's Complaint be dismissed without prejudice with  
22 leave to amend. Plaintiff shall have 30 days from the date of this Order to file an amended complaint  
23 correcting the noted deficiencies. If Plaintiff chooses to file an amended complaint, the document  
24 must be titled "Amended Complaint." The amended complaint must contain a short and plain  
25 statement of the grounds for the Court's jurisdiction. *See* Fed. R. Civ. P. 8(a)(1). Additionally, the  
26 amended complaint must contain a short and plain statement describing the underlying case and  
27 Defendants' conduct that constitutes discrimination. *See* Fed. R. Civ. P. 8(a)(2). Although the  
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1 Federal Rules of Civil Procedure adopt a flexible pleading standard, Plaintiff still must give the  
2 Defendants fair notice of the Plaintiff's claims against them and Plaintiff's entitlement to relief.

3 Additionally, Plaintiff is advised that if she files an amended complaint, the original  
4 complaint (ECF No. 2-1) no longer serves any function in this case. As such, the amended complaint  
5 must be complete in and of itself without reference to prior pleadings or other documents. The Court  
6 cannot refer to a prior pleading or other documents to make Plaintiff's amended complaint complete.  
7 If Plaintiff chooses to file an amended complaint, Plaintiff must file the amended complaint within  
8 30 days from the date of this Order. Failure to comply with this Order may result in a  
9 recommendation that this action be dismissed.

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11 DATED THIS 19th day of August, 2019.

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14 ELAYNA J. YOUCHAH  
15 UNITED STATES MAGISTRATE JUDGE  
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